

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MAINE**

<b>DANIEL J. DONOVAN,</b>	)	
	)	
<b>PETITIONER</b>	)	
	)	
<b>v.</b>	)	<b>CIVIL No. 00-268-P-H</b>
	)	
<b>STATE OF MAINE,</b>	)	
	)	
<b>RESPONDENT</b>	)	

**MEMORANDUM DECISION AND ORDER STRIKING  
PARTIAL OBJECTION TO RECOMMENDED DECISION**

The petitioner Daniel J. Donovan is representing himself in this *habeas corpus* matter. He has filed objections to the Magistrate Judge’s Recommended Decision and I am today overruling them. In addition, however, a lawyer has purported to make “a limited appearance in this matter at Petitioner’s request, to raise an alternative point. . . .” in a document entitled “Partial Objection to Recommended Decision on Petition for Writ of Habeas Corpus.”<sup>1</sup> In other words, the lawyer purports to be representing the petitioner on a single issue while the petitioner continues to represent himself on the case generally.

It is clear that in federal courts individuals have the right to represent themselves and that they have the right to be represented by a lawyer, but they do not have the right to do both simultaneously. See 28 U.S.C.A. § 1654 (West

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<sup>1</sup> The partial objection purports to object to the Recommended Decision of the Magistrate Judge arguing that this Court should order DNA testing of physical evidence before completing review of the petition. No authority has been offered for a federal court’s power to enter such an order on this review  
(continued next page)

1994) (“In all courts of the United States the parties may plead and conduct their own cases personally *or* by counsel. . . .” (emphasis added)); McKaskle v. Wiggins, 465 U.S. 168, 183 (1984) (noting that trial judge not required to allow hybrid representation); United States v. Campbell, 61 F.3d 976, 981 (1st Cir. 1995) (noting that defendant “does not have right to ‘hybrid representation’—choosing those portions of the trial he wishes to conduct and leaving the rest to counsel”); see also O’Reilly v. New York Times Co., 692 F.2d 863, 868 (2d Cir. 1982) (not allowing hybrid representation in civil cases); Lee v. Alabama, 406 F.2d 466, 469 (5th Cir. 1968) (noting that in *habeas corpus* proceeding, the defendant did not have right to hybrid representation partly by himself and partly by counsel). The so-called limited appearance and the partial objection are therefore **STRICKEN**.

The judges of this Court are aware that there is currently discussion about amending Me. R. Civ. P. 11 to permit lawyers to enter limited appearances in state court where their representation might be limited to particular issues or particular phases of the case. Whether any such change will become effective is, of course, unknown. But lawyers should be clear that federal authority is to the contrary, and that specific approval of a presiding judge would be required for any such limited appearance for cases either filed in federal court or removed to federal court from state court. **So ORDERED**.

**DATED THIS 16TH DAY OF FEBRUARY, 2001.**

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of a state conviction.

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**D. BROCK HORNBY**  
**UNITED STATES CHIEF DISTRICT JUDGE**

**U.S. DISTRICT COURT  
DISTRICT OF MAINE (PORTLAND)  
CIVIL DOCKET FOR CASE #: 00-CV-268**

**DANIEL J DONOVAN  
PLAINTIFF**

**DANIEL J DONOVAN  
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**V.**

**MAINE, STATE OF  
DEFENDANT**

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